

Application No. 10/615,886  
Amendment Dated May 26, 2004  
Reply to Office Action of February 26, 2004

**REMARKS**

In the Office Action dated February 26, 2004, claims 1-38 were examined with the result that all claims were rejected. In response, Applicant has rewritten claims 1, 9, 10, 13, 16, 19, 27, 28, 31 and 32, and has canceled claims 12 and 30. In view of the above amendments and following remarks, reconsideration of this application is requested.

Before turning the rejections of record, Applicant would like to briefly summarize the amendments made to the claims. Each of independent claims 1, 13, 19 and 31 have been amended to include structural features which Applicant believes distinguishes these claims from the prior art cited by the Examiner, and thus renders these claims patentable. More specifically, independent claims 1, 13, 19 and 31 all now define the bait station as having a cap that encloses the open top base of the bait station and covers the bait well in such a manner that Applicant believes it distinguishes over the prior art cited by the Examiner. These four independent claims all now require the cap to include a cap ceiling having an outer periphery and a rim extending downwardly from the outer periphery of the cap ceiling wherein the cap rim is located adjacent to and interiorly of the outer wall of the open top base in such a manner that the outer periphery is disposed substantially flush with the outer rim of the outer wall. Support for this limitation can clearly be seen in the drawings as originally filed as for example in Figs. 1, 4 and 5 wherein the outer rim 7 of outer wall 6 is illustrated as being substantially flush with the outer periphery of the ceiling 23 of cap 3. Reference is also made to the description found at page 7, lines 11-19. One of the advantages of such a structural feature is that when the rim of the cap is disposed inside the outer wall of the base and the cap is flush with the outer wall's rim, it becomes much more difficult to pry off, and helps to avoid accidental opening of the bait station. See for example the description contained at page 3, lines 13-17 of the specification as filed.

Independent claims 1, 13, 19 and 31 now also all include the feature that the cap of the bait station includes a cap strut extending across the underside of the cap ceiling and downwardly therefrom so that the cap strut engages the inner rim of the base to support the cap ceiling. Support for this limitation can again be found in the drawings, especially

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Figs. 4 and 5 as well as in the description at page 8, lines 16-29. The struts 32 provide numerous advantages to the bait station. Struts 32 help support the cap ceiling 23 and are designed to transmit force directly to the spike 4 when a person pushes down on cap 3 without stressing the other components of the bait station. Struts 32 also function to space cap ceiling 23 sufficiently far above the bait well 12 so that insects can readily access the bait contained therein. Finally, as noted in the description, without struts 32, it is possible that cap 3 might collapse into a concave configuration when pushed into base 3, or when the bait station is inserted into the ground. Because the rim of the cap is located inside of the outer wall of the base, there is no support to prevent collapsing of the ceiling of the cap in the absence of providing struts 32. This is different from what is disclosed in the Novack reference, which is the primary reference cited by the Examiner, as will hereinafter be described.

In the Office Action, claims 19, 20, 23, 24 and 27-29 were rejected under 35 USC §102(e) as being anticipated by Novack U.S. 6,594,948. In response, Applicant has amended the claims as noted above. More specifically, Applicant refers the Examiner to Figs. 8-10 of Novack which show the cap 8 assembled to base 7 of Novack's bait station. Specifically, Applicant also refers the Examiner to the description contained at column 6, line 63 to that found at column 7, line 3 as well as column 7, lines 11-14 which reads as follows:

"As the cap is received on the base section, the planar member 28 thereof is received on the top edge 12 of the base sidewall, and is supported thereby. Simultaneously, and as best shown in Fig. 9, the leading edge 30 of the cap is received on or against the flange 20 within the channel 23, such that the cap is supported entirely by the sidewall of the base section, primarily through the top edge 12, and the flange 20.

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Moreover, as the cap is supported by the sidewall of the base, the cap is capable of bearing a greater degree of top loading than existing bait stations on the market, without otherwise being crushed."

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As the Examiner can see, Novack utilizes top edge 12 (see Fig. 10) of wall 11 as the only support for cap 8 which is contained inside of rim 29 of cap 8. Although the use of top edge 12 may adequately support cap 8 in Novack's structure, such a support would provide inadequate support in a bait station that is intended to be utilized with a spike and inserted into the ground. The Examiner will note that Novack's bait station does not contain a spike and therefore, only limited amount of force is used to push cap 8 onto base 7. Therefore, supporting cap 8 throughout its center is not a primary concern of Novack. Since there is no need to push Novack's bait station into the ground, there is no need to support the center of Novack's cap. Thus, it can be seen that there is no motivation to provide any cap struts, such as Applicant's structure, in Novack's bait station since Novack's bait station was not intended to be pushed into the ground, but instead was merely intended to be placed on top of the ground. In contrast, Applicant's structure is intended to be pushed into the ground and therefore cap struts play an integral role in preventing the collapse of Applicant's cap. In addition, the Examiner will note that the rim of Applicant's cap is inserted inside the outer wall of the base. Thus, there is no top edge, such as top edge 12 in Novack's structure, which could be utilized to provide internal support for Applicant's cap. Thus, Applicant needs struts 32 to provide a rigid structure when inserting Applicant's bait station into the ground.

Finally, the Examiner will note that the independent claims now call for the cap ceiling to be substantially flush at its outer periphery with the outer wall of the base. This clearly distinguishes Applicant's structure from that shown in Novack. As shown best in Fig. 10 of Novack, the outer periphery of Novack's cap, i.e. where rim 29 meets the planar ceiling 28 (approximately where continuous lip 33 is indicated in Fig. 10) is clearly not flush with the top edge of outer wall 22. Thus, the independent claims are clearly distinguishable and patentable over Novack, or a combination of Novack with Baker U.S. 6,651,378 or Lund et al U.S. 6,474,015. As noted earlier, there is no motivation to combine the cap strut illustrated in Lund et al with the bait station of Novack since Novack clearly stated that the top edge 12 of wall 11 adequately supports cap 8.

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Finally, even if one were to combine Novack with Baker and Lund et al, one would still not arrive at Applicant's structure. All of the independent claims call for the downwardly extending rim of the cap to be located inside the outer wall with the periphery of the cap disposed flush with the upper rim of the outer wall. Combining Baker, Lund et al and Novack would not provide such a feature. Instead, Novack's bait station would continue to have the rim 29 of cap 8 outside of wall 11. Also although rim 29 might be inside of wall 22 of Novack, its outer periphery is not flush with the top of wall 22.

In the Office Action, claims 21 and 22 were rejected under 25 USC §103(a) as being unpatentable over Novack '948. However, as previously discussed herein, Novack does not meet the claim limitations regarding the structure of Applicant's cap which are now contained in independent claim 19 from which claims 21 and 22 depend. Therefore, Applicant believes this rejection is moot in view of the above arguments and amendments.

In the Office Action, claims 1-11 and 25 were rejected under 35 USC §103(a) as being unpatentable over Novack '948 and further in view of Baker '378. The Examiner states that Baker discloses a spike, and it would be obvious to include a spike on the bait station of Novack. However, as previously noted above, neither Novack nor Baker discloses or suggests the cap structure now claimed for Applicant's bait station. Also, it is important to note that Novack's device is not intended to be inserted into the ground. Thus, a combination of Novack and Baker still does not meet the limitations of the claims as now amended.

In the Office Action, claims 12-18 were rejected under 35 USC §103(a) as being unpatentable over Novack in view of Baker and further in view of Lund et al '015. Again, the Examiner indicates that it would be obvious to include the spike of Baker and the cap struts of Lund et al with the bait station of Novack. However, Applicant has argued above that even a combination of these three references do not show what is now claimed by Applicant. Accordingly, Applicant believes this rejection is also now moot.

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In the Office Action, claims 30-35 were rejected under 35 USC §103(a) as being unpatentable over Novack in view of Lund et al. Once again, Applicant believes it has adequately distinguished over a combination of these references, and believes this rejection is now moot.

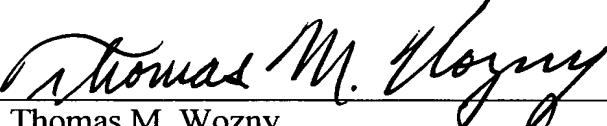
In the Office Action, claims 36-38 were rejected under 35 USC §103(a) as being unpatentable over Novack in view of Lund et al and further in view of Baker. Again, however, in view of Applicant's amendment to the claims to further define the cap structure and its relationship to the base and bait well, Applicant believes this rejection has been overcome herein and is now moot.

An effort has been made to place this application in condition for allowance and such action is earnestly requested.

Respectfully submitted,

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